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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Angelina T. et al., Persons Coming Under the Juvenile Court Law.	
SAN MATEO COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. A.L., Defendant and Appellant.	A144565 (San Mateo County Super. Ct. Nos. 82132, 83574)

The juvenile court took jurisdiction over Angelina and Isabella T. under Welfare and Institutions Code section 300, subdivision (b).[1] A.L. (Mother) appeals from an order entered after judgment, in which the juvenile court granted a section 388 petition by respondent San Mateo County Human Services Agency (Agency) to limit her right to make educational and medical decisions for both children.[2] Mother contends she was not

[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . ." (§ 388, subd. (a)(1).)

properly noticed and also asserts the court abused its discretion in failing to appoint a guardian ad litem to serve on her behalf. We reject both arguments and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND[3]

Original Section 300 Petition

In March 2012, the Agency filed a dependency petition on behalf of Angelina, then 10 months old. An amended petition filed shortly thereafter alleged Mother and S.T. (Father; collectively Parents) had a history of domestic violence. In February, Mother hit Father causing him to bleed, while Angelina was in the home. After police arrived, Mother was arrested for domestic violence and hospitalized, pursuant to section 5150, after making suicidal statements.[4] Parents subsequently violated an emergency protective order protecting Father from Mother. The second allegation stated Parents had histories of mental health issues (for Mother, borderline personality disorder and major depressive disorder; for Father, schizophrenia); had previously entered into a voluntary services plan with the Agency; failed to comply with that plan by failing to take prescribed medication and follow through with counseling, resulting in emotional instability and Mother's section 5150 hospitalization; and Parents' house had child safety hazards. The third allegation stated Mother had lost custody of an older child due to her untreated mental health issues.

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[3] In a prior proceeding, we granted in part Mother's petition for writ review (Cal. Rules of Court, rule 8.452) of the juvenile court's order setting a section 366.26 hearing. (*S.T. v. Superior Court* (July 15, 2015, A144865) [nonpub. opn.].) Much of our factual and procedural background is taken from that opinion.

[4] Section 5150, subdivision (a), provides in part: "When a person, as a result of mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services."

The jurisdiction and disposition hearing was held on March 26, 2012. The juvenile court sustained the allegations of the amended petition and declared Angelina a dependent of the court. Angelina was removed from Parents' custody and detained with her maternal grandparents. Reunification services were ordered for Parents. During the following six months, Parents participated in services, therapy, and mental health treatment and had stable housing. On September 26, Angelina was returned to Parents' custody with continued court supervision and family maintenance services.

A review hearing was held in March 2013. The Agency's report stated that Parents had been involved in another domestic violence incident in January, while Angelina was in the home, resulting in Father's arrest. Mother and Angelina moved to a domestic violence shelter, but returned to live with Father on March 1. Mother had been participating in therapy and was compliant with her medications. She had been inconsistent in attending psychiatrist appointments and had not attended domestic violence classes because she was on pregnancy bed rest. Father had been inconsistent with individual therapy, anger management classes, and his medications. The juvenile court ordered continued family maintenance services and set a second review hearing for September.

During the following six months, Isabella was born. Parents did not report any incidents of physical violence during this period, although they had a verbal argument while the children were home. Mother was compliant with her medications but inconsistent with anger management classes. Father was inconsistent with therapy and was not participating in anger management classes. At the September 2013 review hearing, the juvenile court ordered continued court supervision and family maintenance services.

Second Section 300 Petition

In February 2014, the Agency filed a dependency petition on behalf of Isabella, then 10 months old, alleging Parents continued to engage in domestic violence.[5] The Agency's subsequent jurisdiction/disposition report stated Parents continued to engage in domestic violence disputes in the children's presence. Mother and the children moved to a domestic violence shelter in January, but Mother was asked to leave in March because of her aggression towards residents and staff. Between March and May, Mother was transient, moving multiple times among different temporary housing; in May, she moved in with her parents and resumed mental health treatment. Father had not seen his psychiatrist or therapist regularly, and the Agency could not confirm the status of his participation in domestic violence classes. In April, Father was hospitalized due to the need to take psychotropic medications. Also in April, Mother allowed Father to stay with her and the children for a couple of days. In June, the juvenile court sustained the amended allegations of the petition, declared Isabella a dependent of the court, and ordered her to remain in Mother's custody with continued court supervision and services. The court directed no contact between Father and Mother except for the peaceful exchange of the children for visitations.

A review hearing was held in July 2014. Father had not resumed mental health services, and the Agency expressed concerns about his mental health. He had been sending threatening messages to Mother. Mother and the children had been living with Mother's parents, but in late July they asked Mother to leave because of her verbal abuse. She and the children began living in Turlock. The court ordered additional family maintenance services and ordered Father have only supervised visitation at the visitation center.

In October 2014, the Agency filed section 387 supplemental petitions on behalf of both children, alleging the prior dispositions had not been effective in protecting the

[5] The Agency concurrently filed a section 387 supplemental petition on behalf of Angelina with similar allegations. This petition was withdrawn.

children. The supplemental petitions alleged Mother had repeatedly violated court orders by permitting Father to have access to the children without Agency supervision, and Parents had continued to engage in domestic violence disputes in the children's presence and had not consistently utilized services. Following a detention hearing, the children were detained with their maternal grandparents pending the jurisdiction and disposition hearing.

In October 2014, the Agency social worker reported she had learned Mother was allowing Father access to the children and he had been transporting the children to and from daycare. On October 9, Parents engaged in a public verbal altercation during which Father was holding Angelina and yelling at Mother. Police were called by a third party. Mother told a responding officer that she had continued to allow Father to visit her and the children in their motel room "every other day." Subsequently, Father told the Agency social worker he had in fact been living with Mother and the children for a month before the October 9 incident, they were back together, and they had agreed not to call the Agency or the police in the event of further domestic disputes. Father also reported an incident in which Mother repeatedly hit Father until he bled, in front of the children. The Agency's report also noted Mother had not transferred her medical insurance to her new county of residence so that she could access mental health services, had not enrolled the children in recommended therapy, and had delayed getting them into protective daycare. Father was not participating in mental health treatment or domestic violence/anger management classes.

The jurisdiction and disposition hearing was continued several times before it was finally held on April 6, 2015. Between October 2014 and April 2015, the Agency filed interim reports. In a December 2014 Agency report, the social worker reported both Mother and Father were failing to participate in mental health treatment. The social worker also indicated difficulty communicating with Mother, who had failed to respond to e-mails and refused to give a witness statement without counsel present. The children's behavior and development had improved since moving in with the maternal grandparents.

A January 2015 Agency report further described the breakdown in Mother's communication with the social worker. Mother now insisted on communicating only by e-mail. Mother was homeless and refused to participate in mental health services. The maternal grandparents reported Mother exhibited signs of deteriorating mental health—acting "paranoid," appearing unkempt, and switching from topic to topic. Mother had failed to schedule several visits with the children. Father was not participating in mental health treatment and was not taking his medications. He had consistently visited the children and the visitations had gone well.

In February 2015, the Agency filed a section 388 request to change court order seeking to limit the Parents' rights to make educational and medical decisions for the children. The Agency observed that Mother had ceased all communication with the social worker and refused to sign consent forms for the children's services. The request and notice of hearing date were served on Mother's attorney and Mother, at the maternal grandparents' home in Daly City. A supplemental memo from the social worker informed the court that Mother's housing since December 2014 had been unstable, with indications that she had lived in Turlock, San Francisco, and Alameda County. The social worker reported Mother was not engaged in her own mental health services and had refused to sign consent forms for the children's services. Mother initially stated she wanted her attorney to review the forms. After her attorney did so, Mother then requested contact with the service providers but delayed following up to coordinate such meetings. The social worker arranged telephone calls with the service providers, but Mother was angry and still refused to sign consent forms. Finally, Mother had told the social worker she wanted no further contact and that all questions should be addressed to her attorney.

On the originally scheduled hearing date for the Agency's section 388 request, Mother was not present. Counsel stated they had not received notice and the matter was continued to March 17, 2015. Notice of the continued hearing date was served on Mother at the maternal grandparents' home in Daly City. On March 17, 2015, Mother's counsel appeared and raised a notice objection on Mother's behalf, who was not present.

Mother's counsel also requested appointment of a guardian ad litem. Specifically, Mother's counsel said: "[Mother] has stopped communicating with me. I have not spoken with her. [¶] [The social worker] knows that my client does not live at her parents' home and that she lives in Turlock now. [¶] I am also, based on [the social worker's] memo to the Court, asking for a guardian ad litem for my client. She obviously needs someone who can communicate with her. I have not been able to do that." County counsel responded, "I will make an offer of proof. [¶] Since our last hearing, when we continued it to today, [Mother] has contacted her parents where the children reside and said she knows about the hearing and doesn't want anything to do with CPS; she is done. [¶] So she knew about today. She has just chosen to check out."

The juvenile court found that notice had been given as required by law and granted the Agency's section 388 request. The Agency was granted the right to consent to medical services for the children, while the maternal grandparents were granted educational rights. The juvenile court denied the request that a guardian ad litem be appointed on Mother's behalf. Mother filed a timely notice of appeal from the March 17 order.[6]

II. DISCUSSION

Mother contends that the order granting the Agency's section 388 petition must be reversed because: (1) she was not properly served with notice of the hearing on the motion; and (2) the juvenile court abused its discretion in failing to appoint a guardian ad litem to serve on her behalf. We reject both arguments.

A. *Notice*

Mother argues she was not properly noticed for the March 17 hearing on the Agency's section 388 request to change a court order because notice should have been

[6] The order is appealable as an order after judgment. (§ 395, subd. (a)(1) ["[a] judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment"].)

sent to a San Bruno address where she had not lived since early 2014.[7] She also argues notice should have been sent to Turlock where she lived from approximately August through December 2014. We disagree.

Unless parental rights have been terminated or notice has been waived, both parents must be notified of all proceedings involving a dependent child. (§§ 290.2, 291, 302, subd. (b); see Cal. Rules of Court, rules 5.524(e), 5.570(g).) However, " '[t]he means employed to give notice "must be such as one, desirous of actually informing the absentee, might reasonably adopt to accomplish it." ' " (*In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598.)

Mother was homeless as of early January 2015. Between December 2014 and April 2015, Mother lived in Turlock, San Francisco, on "the beach," in an Alameda County hotel, a Modesto residence, and a Modesto crisis intervention facility. On March 17, 2015, neither the social worker nor Mother's counsel apparently knew Mother's exact whereabouts. Notice of the hearings during this period were mailed to Mother at her parents' address in Daly City. It was reasonable to conclude Mother's parents' address was where Mother was most likely to receive actual notice: she was moving frequently during this period, yet apparently remained in contact with her parents. (See § 291, subd. (a)(7) ["[i]f there is no parent or guardian residing in California, or if the residence is unknown, then [notice shall be given] to any adult relative residing within the county"].) Certainly, Mother was much more likely to receive actual notice at this address than in San Bruno or Turlock, where she clearly did *not* have a stable place of residence during this period.

Moreover, according to county counsel's offer of proof, Mother spoke to her parents before the March 17 hearing and confirmed that she knew about that court date. Mother had actual notice of the hearing and has failed to persuasively show prejudice

[7] Although Mother argues this address should be deemed her address of record pursuant to section 316.1, she never formally designated it as such. Nor did she notify the court or the Agency in writing of a new address of record. (§ 316.1, subd. (a).)

from any inadequacies in the notice. (See *In re A.D.* (2011) 196 Cal.App.4th 1319, 1325 ["a failure to give notice in dependency proceedings is subject to a harmless error analysis"].)[8]

B. *Guardian Ad Litem*

Mother also contends that the March 17 order must be reversed because the court denied, without a hearing, her counsel's request for appointment of a guardian ad litem. She further argues that the failure to appoint a guardian ad litem violated her right to due process and she was prejudiced at the subsequent jurisdiction and dispositional hearing on April 6, 2015.

In a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the juvenile court. (*In re James F.* (2008) 42 Cal.4th 901, 904; Code Civ. Proc., § 372, subd. (a)(1).) "The test is whether the parent has the *capacity* to understand the nature or consequences of the proceeding and to assist counsel in preparing the case." (*James F.*, at p. 910, italics added.) "[T]he primary concern in section 300 cases is whether the parent understands the proceedings and can assist the attorney in protecting the parent's interests in the companionship, custody, control and maintenance of the child. . . . [Accordingly,] a guardian ad litem should be appointed if the requirements of either Penal Code section 1367 or Probate Code section 1801 are met." (*In re Sara D.* (2001) 87 Cal.App.4th 661, 667 (*Sara D.*), fn. omitted.) The court's failure or refusal to appoint a guardian ad litem is reviewed for an abuse of discretion. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1367–1368.)

We agree with the Agency that the juvenile court did not abuse its discretion in failing to appoint a guardian ad litem or failing to conduct a hearing. "When a dependency court has knowledge of a party's minor status or incompetence under [Code of Civil Procedure] section 372, the dependency court has an obligation to appoint a

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[8] Mother misplaces her reliance on *In re DeJohn B.* (2000) 84 Cal.App.4th 100. In that case, it was determined that the agency's complete *failure to attempt to locate* and give notice of a six-month review hearing was reversible per se. (*Id.* at pp. 109–110.)

[guardian ad litem] sua sponte." (*In re A.C.* (2008) 166 Cal.App.4th 146, 155 (*A.C.*).) Here, however, nothing suggested Mother was incompetent.

The juvenile court had opportunities to consider Mother's behavior in court and to assess her ability to understand the dependency court proceedings and to assist her counsel. At a hearing on October 30, 2014, Mother gave wholly appropriate answers to the court's inquiries. The record contains many references to Mother's mental health challenges, but no evidence of cognitive disability. That a parent suffers mental health challenges is insufficient to require that a guardian ad litem be appointed. (See *In re Ronell A., supra*, 44 Cal.App.4th at pp. 1367–1368 [no error in failing to appoint guardian ad litem despite father's impaired mental capacity and schizophrenia diagnosis]; *In re R. S.* (1985) 167 Cal.App.3d 946, 979–980 [mother had mild mental retardation and dependent personality disorder, but record established she understood "the nature of the proceedings against her and was able to meaningfully participate in those proceedings and to cooperate with her trial counsel in representing her interest"].)

At the March 17 hearing, neither Mother's counsel nor the social worker presented any evidence Mother's situation had changed so drastically as to make her incompetent. Mother's counsel did not contend Mother was *unable* to understand the nature of the proceedings or to assist her. Nor does the social worker's memo support a finding of incompetence. "[W]hile social studies are admissible on the question of jurisdiction, we question whether these documents, which contain multiple hearsay, are admissible to determine whether an adult is competent. Moreover, the social study naturally focuse[s] on the significant problems [a mother] had in raising [the child], which . . . have little relevance on the issue of [the mother's] competency." (*Sara D., supra*, 87 Cal.App.4th at p. 674, fn. omitted.) Even assuming the agency's reports and the social worker's memo were properly considered by the court, they did not show, as Mother asserts in her opening brief, that she "was no longer *able* to communicate with her social worker or lawyer." (Italics added.) Rather, the record shows only that Mother had recently "stopped communicating" with her counsel and told the social worker she wanted no

further contact. The juvenile court could did not abuse its discretion in denying the request.

Nor does the authority cited by Mother suggest a separate hearing was required in this situation. In *Sara D., supra,* 87 Cal.App.4th 661, the Fifth District Court of Appeal found that the juvenile court had committed error by appointing a guardian ad litem for the mother. (*Id.* at pp. 663–664, 672.) In making the appointment, the juvenile court relied on counsel's statements that he was having difficulty communicating with the mother because she either did not appreciate or understand the issues before the court and was confused about the proceedings. (*Id.* at p. 664.)

In finding that the juvenile court's appointment order without a hearing violated the mother's right to due process, the reviewing court initially observed: "If the attorney consults with the client and receives consent for the appointment of a guardian ad litem, the due process rights of the parent will be protected, since the parent participated in the decision to request the appointment. [¶] If the parent does not consent, or the attorney forgoes consultation with the client and approaches the court directly, the court will find itself in a significantly different position. The court is being asked to dramatically change the parent's role in the proceeding by transferring the direction and control of the litigation from the parent to the guardian ad litem." (*Sara D., supra,* 87 Cal.App.4th at p. 668.) Because "[t]ransferring direction and control of the litigation through appointment of a guardian ad litem in a dependency proceeding may jeopardize the parent's interest [in the companionship, care, custody, and management of the child]" (*id.* at p. 669), "the parent's right to due process requires an informal hearing and an opportunity to be heard" (*id.* at p. 663).

The statements of counsel and the social worker's reports did not support the appointment order. The reviewing court explained: "The [juvenile] court relied on the conclusionary statements of [the mother's] counsel without determining the factual basis or foundation for his conclusions. . . . [¶] . . . [¶] Assuming that the social studies were properly considered by the court, they essentially confirmed testimony that [the mother] had psychological problems (major depression [mild recurrent], posttraumatic stress

disorder with chemical dependency in remission, and borderline personality disorder) and that [the mother] had fragmented thoughts which made it difficult for her to stay focused. At times, [the mother] would have chaotic relationships with both children and adults. None of this evidence, however, supports a conclusion that [the mother] did not understand the nature of the proceedings or was unable to assist counsel in protecting her interests." (*Sara D., supra*, 87 Cal.App.4th at p. 674, fn. omitted.)

Sara D. teaches that the juvenile court violates a parent's right to due process when it appoints a guardian ad litem without holding an informal hearing and giving the parent an opportunity to be heard. (*Sara D., supra*, 87 Cal.App.4th at p. 672.) However, Mother cites no authority for the converse proposition—that refusing to appoint a guardian ad litem without a hearing is likewise a due process violation.

In fact, the *A.C.* court rejected a similar argument. In that case, the juvenile court did not appoint a guardian ad litem for the father, despite the fact a conservatorship for him under the Lanterman-Petris-Short Act had been ordered and repeatedly renewed. (*A.C., supra*, 166 Cal.App.4th at p. 148.) Thus, it was undisputed that the dependency court failed its statutory obligation, under Code of Civil Procedure section 372, to appoint a guardian ad litem to appear or direct that an already appointed guardian appear on the father's behalf in dependency proceedings. (*Id.* at p. 156.)

Nonetheless, the reviewing court found the juvenile court's failure to comply with the statute did not violate the father's due process rights. It explained: "Failure to appoint a [guardian ad litem] . . . does not mean the parent has been denied notice and an opportunity to be heard regarding his interest in a child's companionship, care, and custody [citation]. By contrast, when a dependency court finds a parent incompetent and appoints a [guardian ad litem] without the benefit of an informal hearing and an opportunity to be heard, the effect of such an order is to transfer direction and control of the litigation from the parent to the [guardian ad litem], who may waive the parent's rights. [Citation.] Clearly, the purpose of a [guardian ad litem] appointment in a dependency case is to protect the parent's rights. [Citation.] The failure so to appoint,

however, does not necessarily mean the parent's right to due process has been violated." (*A.C., supra*, 166 Cal.App.4th at p. 157.)

Unlike in *Sara D., supra*, 87 Cal.App.4th at page 664, *A.C., supra*, 166 Cal.App.4th at page 148, or the other authority Mother cites, nothing in the record before us indicates that Mother lacked the capacity to understand the juvenile court proceedings or to assist her counsel. Mother has not shown an abuse of discretion.

III. DISPOSITION

The March 17, 2015 order granting the Agency's section 388 petition is affirmed.

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BRUINIERS, J.

WE CONCUR:

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JONES, P. J.

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SIMONS, J.